

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In re Applications of)
)
GTE CORPORATION,)
Transferor,)
)
and)
)
BELL ATLANTIC CORPORATION,)
Transferee)
)
For Consent to Transfer Control of Domestic)
and International Sections 214 and 310)
Authorizations and Application to Transfer)
Control of a Submarine Cable Landing License;)
and)
)
AMERITECH CORP.,)
Transferor,)
)
and)
)
SBC COMMUNICATIONS INC.,)
Transferee,)
)
)
For Consent to Transfer Control of)
Corporations Holding Commission Licenses)
and Lines Pursuant to Sections 214 and 310(d))
of the Communications Act and Parts 5, 22, 24,)
25, 63, 90, 95 and 101 of the Commission's)
Rules)

CC Docket No. 98-184

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-141

COMMENTS OF METRO TELECONNECT COMPANIES, INC.

METRO TELECONNECT COMPANIES, INC.

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April 25, 2001

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Summary

Metro Teleconnect Companies, Inc. (“Metro Teleconnect”) hereby requests that the Commission find that all of the Verizon Merger Conditions should apply to the Puerto Rico Telephone Company, Inc. (“PRTC”). Metro Teleconnect resells local telephone service to thousands of residential consumers unwanted by traditional telephone companies, and it is in the process of preparing a tariff, and negotiating an interconnection agreement with PRTC in order to launch competitive operations in Puerto Rico promptly. Metro Teleconnect must rely on PRTC’s underlying facilities and support functions to provide residential service throughout Puerto Rico.

Despite Verizon’s current minority ownership interest in PRTC, Verizon’s avowed *de facto* and *de jure* control of PRTC, through Verizon’s wholly-owned affiliate GTE Holdings, warrants that PRTC be subject to the merger conditions voluntarily agreed to by Verizon in the *Bell Atlantic/GTE Order*. Commission precedent makes clear that notwithstanding an entity’s minority ownership of another company, the issue of that entity’s *de facto* control of the company is what is most probative. The language of the Verizon Merger Conditions also supports a finding that the conditions already apply to PRTC throughout its service area.

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Comments of Metro Teleconnect Companies, Inc.

Metro Teleconnect Companies, Inc. ("Metro Teleconnect"), by counsel, hereby submits these comments in support of the *Ex Parte* Letter filed by WorldNet Telecommunications, Inc. ("WorldNet") in connection with the conditions attached to the merger of GTE Corporation

(“GTE”) and Bell Atlantic Corporation (“Bell Atlantic”) (collectively, “Verizon”).¹ For the reasons stated below, Metro Teleconnect submits that Verizon’s control of the Puerto Rico Telephone Company, Inc. (“PRTC”) warrants a Commission finding that all of the Verizon Merger Conditions should apply to PRTC.²

Background

Like WorldNet, Metro Teleconnect is a company borne of the Telecommunications Act of 1996³ and which provides competing local telecommunications services through resale. Specifically, since commencing service in 1997, Metro Teleconnect has been providing prepaid local telephone service to thousands of residential consumers unwanted by traditional telephone companies.⁴ These consumers are unwanted because they may have poor credit histories, cannot provide a security deposit, had telephone service disconnected in the past, have past due balances, or lack sufficient identification. To eliminate some of the risk from providing service to these high-risk consumers, Metro Teleconnect requires payment prior to providing service, but

¹ See Letter from Edwin Quiñones and Frank A. Rullan, Counsel for WorldNet Telecommunications, Inc., to Michael K. Powell, Chairman, FCC (dated Feb. 12, 2001) (“*WorldNet Ex Parte Letter*”); see also “Pleading Cycle Established for Comments on WorldNet Telecommunications, Inc. *Ex Parte* Letter Concerning Bell Atlantic/GTE Merger Conditions,” CC Docket Nos. 98-141, 98-184, Public Notice, DA 01-764 (rel. Mar. 26, 2001).

² *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (“*Bell Atlantic/GTE Order*”); App. D, Market-Opening Conditions (“Verizon Merger Conditions”).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*); see *WorldNet Ex Parte Letter* at 7.

⁴ Resale providers of such prepaid local telephone services commonly are referred to as alternative local exchange carriers (“ALECs”).

does not check credit or require security deposits. In many cases, the service provided by Metro Teleconnect is the only option for local phone service, including access to 911 emergency service, for American consumers.

In order to provide local phone services, Metro Teleconnect resells the flat-rate, local telephone services of incumbent local exchange carriers (“incumbent LECs”), including Verizon.⁵ Metro Teleconnect is authorized by certificate, registration, or as appropriate, by deregulation, to provide resold local exchange services in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia, and currently is providing such services to more than 30,000 residential consumers. Metro Teleconnect also recently was awarded a certificate to provide such services in Puerto Rico, and it is in the process of preparing a tariff, and negotiating an interconnection agreement with PRTC in order to launch competitive operations in Puerto Rico promptly. Metro Teleconnect must rely on PRTC’s underlying facilities and support functions to provide residential service throughout Puerto Rico.

Too often, however, the actions and inaction of incumbent LECs such as Verizon have created significant obstacles for Metro Teleconnect and other resellers seeking to enter markets

⁵ The Commission has recognized that resale is an important entry strategy into the local exchange market. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, at para. 907 (1996) (“we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks”).

competitively.⁶ In recognition of this, and in light of the significant potential competitive harms that the Commission attributed to the proposed combination of Bell Atlantic and GTE, the Commission adopted the *Bell Atlantic/GTE Order* only after the merger proponents proffered market-opening commitments to tip the public interest scale in favor of benefits flowing from the merger.⁷ Competitors in Puerto Rico fully expected that they, too, would benefit from these strong, procompetitive measures, but instead they have been stymied and stonewalled by PRTC's (hence Verizon's) insistence that the market-opening commitments do not apply to the Puerto Rico market.⁸ If Metro Teleconnect is to be able to provide service to its otherwise-unserved population base in Puerto Rico, the Commission must remove all shades of doubt and clearly apply all of the Verizon Merger Conditions to PRTC in accordance with the suggestions below.

Discussion

I. THE VERIZON MERGER CONDITIONS MUST APPLY TO PRTC

A. Verizon's Control of PRTC Warrants the Determination that the Verizon Merger Conditions Apply to PRTC

As discussed in the *WorldNet Ex Parte Letter*, PRTC is the only incumbent LEC in Puerto Rico and it has absolute dominance over the local telephony market there.⁹ WorldNet

⁶ See, e.g., *WorldNet Ex Parte Letter* at 7-16 (documenting the obstacles that WorldNet and other competitors have faced in trying to enter the Puerto Rico market).

⁷ See *Bell Atlantic/GTE Order*, at paras. 246-47.

⁸ See *WorldNet Ex Parte Letter* at 2.

⁹ See *id.*

also indicates that PRTC is controlled by Verizon, and aptly cites to the Commission order that established Verizon's control of PRTC.¹⁰

In the *GTE/PRTC Order*, the Commission detailed the nature of Verizon's control of PRTC.¹¹ GTE Holdings (Puerto Rico) LLC ("GTE Holdings"), a wholly-owned subsidiary of GTE (now Verizon), through acquiring partial ownership of an intermediary corporation, Telecomunicaciones de Puerto Rico, Inc. ("TELPRI"), owned approximately 40 percent of PRTC at the conclusion of the transaction, while PRTC's previous parent, the Puerto Rico Telephone Authority ("PRTA"), retained approximately 45 percent ownership of PRTC. GTE Holdings, however, exercises control over PRTC through several mechanisms.¹² First, GTE Holdings is entitled to elect a majority of TELPRI's directors, and thereby name the senior officers of TELPRI and PRTC. In fact, GTE Holdings did appoint the current CEO of TELPRI and PRTC as well as other officers within those companies.¹³ In addition, a shareholder agreement among GTE Holdings and other shareholders gives GTE Holdings certain powers over the governance and operations of PRTC, and GTE Holdings is in a management agreement with TELPRI and PRTC. Thus, GTE Holdings has the ability to determine PRTC's policies and

¹⁰ See *id.* at 3-4. See also *Puerto Rico Telephone Company Petition for Waiver of Section 32.27 of the Commission's Rules*, ASD File No. 98-93, Order on Reconsideration, DA 01-1070, at para. 1 n.1 (rel. Apr. 25, 2001).

¹¹ *Applications of Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferee, For Consent to Transfer Control of Licenses and Authorizations Held by Puerto Rico Telephone Company and Celulares Telefónica, Inc.*, File Nos. 03373-03384-CL-TC-98, Memorandum Opinion and Order, 14 FCC Rcd 3122 (1999) ("*GTE/PRTC Order*").

¹² See *id.* at paras. 6, 66.

¹³ *WorldNet Ex Parte Letter* at 4 (citing TELPRI SEC Form S-4/A, at 73-76 (filed Oct. 27, 1999)).

otherwise conduct its affairs.¹⁴ Furthermore, GTE Holdings and other shareholders have an option to purchase additional TELPRI stock from PRTA at a fixed price within three years of the closing date, and the parties “anticipate[d] that PRTA will begin reducing its remaining interest in TELPRI . . . in order to raise funds to finance obligations of the [Puerto Rico] Government’s retirement system.”

While several of these factors constitute the classic indicia of the locus of control of a company,¹⁵ most significantly, *GTE Holdings itself conceded that despite holding less than half of the stock of PRTC (through TELPRI), GTE Holdings “will clearly retain de jure and de facto control of PRTC.”*¹⁶ The Commission, albeit in the context of evaluating Bell Atlantic and GTE’s proposal to spin off GTE’s Internet and related assets in order for their merger to comply with section 271 of the Act, addressed the impact of *de facto* control of a company:

In ascertaining where actual control resides, “we are governed chiefly by the demonstration of [the shareholder’s] power to dominate the management of corporate affairs.” Although the percentage of voting stock held by a minority shareholder is relevant, the Commission also has considered as important factors the right to elect members of the company’s board of directors, to determine the manner of operation, to make strategic decisions, and to control personnel and financing decisions.¹⁷

¹⁴ See *GTE/PRTC Order*, at para. 66.

¹⁵ See *Bell Atlantic/GTE Order*, at para. 77 n.203 (citing *Intermountain Microwave*, Order, 24 Rad. Reg. (P&F) 983, 984 (1963)).

¹⁶ *GTE/PRTC Order*, at paras. 65-66.

¹⁷ *Bell Atlantic/GTE Order*, at para. 77 (footnotes omitted). See also *News International*, Memorandum Opinion and Order, 97 FCC 2d 349, at para. 16 (1984) (citing *Benjamin L. Dubb*, 16 FCC 274, 289 (1951)).

Furthermore, in *Metromedia, Inc.*, the Commission held that a stock transfer leading to an entity's majority holding of a company entailed no material change in ownership or control of the company where *de facto* control remained in the same hands as prior to the transfer.¹⁸ The Commission stated that in certain cases, "'control' . . . can include situations of control 'in fact' (*de facto* control), regardless of the amount of stock owned."¹⁹ Commission precedent makes clear, therefore, that notwithstanding an entity's minority ownership of another company, the issue of that entity's *de facto* control of the company is what is most probative.²⁰

Besides conceding *de facto* control of PRTC, GTE Holdings also avowed *de jure* control of PRTC.²¹ In Commission annals, *de jure* control is viewed as akin to a majority ownership interest.²² Thus, Verizon's control of PRTC, through its wholly-owned affiliate GTE Holdings,

¹⁸ See *Metromedia, Inc.*, Memorandum Opinion and Order, 98 FCC 2d 300 (1984), *recon. denied*, 56 Rad. Reg. 2d (P&F) 1198 (1984), *appeal dismissed sub nom. California Ass'n of the Physically Handicapped v. FCC*, 778 F.2d 823, 825-27 (D.C. Cir. 1985) (no standing to challenge FCC's approval of stock transfer where *de facto* control of station would remain in the same hands).

¹⁹ *Metromedia, Inc.*, 98 FCC 2d 300, at para. 8. See also *George E. Cameron Jr. Communications (KROQ)*, Memorandum Opinion and Order, 93 FCC 2d 789, at para. 28 (Rev. Bd. 1983), *applications for review dismissed as moot*, 56 RR 2d 825 (1984) (despite transferee's 49 percent *de jure* interest, "the issue here was solely whether [the licensee] had transferred unauthorized *de facto* control. The evidence that it did . . . is irrefutable").

²⁰ See *Bell Atlantic/GTE Order*, at para. 79; *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

²¹ See *supra* p. 6.

²² See *Bell Atlantic/GTE Order*, at para. 76 n.198 (citing *Fox Television Stations, Inc.*, File No. BRCT-940201KZ, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8513, para. 151 (1995), which notes that *de jure* control is typically evidenced by ownership of more than 50 percent of an entity's voting interests).

warrants that PRTC be subject to the merger conditions voluntarily agreed to by Verizon in the *Bell Atlantic/GTE Order*.

B. Other Grounds Also Exist for a Finding that the Verizon Merger Conditions Already Apply to PRTC Throughout its Service Area

Other grounds also exist for a finding that the Verizon Merger Conditions already apply to PRTC. Note 4 to the Verizon Merger Conditions provides in relevant part that the terms “GTE States and Service Area include only those states and service areas where Bell Atlantic/GTE will have incumbent local telephone operations after the Merger Closing Date and after execution of planned sales of local exchange properties.” Because Verizon, by virtue of its control of PRTC, “ha[s] incumbent local telephone operations” in Puerto Rico “after the Merger Closing Date,” PRTC’s operations in Puerto Rico should be encompassed in the definitions “GTE States”²³ and “GTE Service Area” for purposes of the Verizon Merger Conditions.

II. ALL OF THE VERIZON MERGER CONDITIONS MUST APPLY TO PRTC

A. Only the Complete Package of Verizon Merger Conditions Will Redress the Harms from the Merger

In its *Ex Parte* Letter, WorldNet documents thoroughly that Puerto Rico is well behind the United States mainland in telecommunications competition, and that to the extent there is competition at all in Puerto Rico, it is through the provision of wireless telephony.²⁴ Predictably,

²³ As WorldNet points out, Puerto Rico is a territory of the United States, and the Act includes United States Territories in its definition of a “State.” See *WorldNet Ex Parte Letter* at 7; 47 U.S.C. § 153(40).

²⁴ See *WorldNet Ex Parte Letter* at 7-16.

this lag in competition is at least in part due to anticompetitive behavior on the part of PRTC.²⁵ The anticompetitive concerns raised by the Bell Atlantic/GTE merger, such as elimination of a significant benchmark for comparative practice analyses and an increase in the incentive and ability of the larger merged entity to discriminate against rivals in retail markets, are equally felt in Puerto Rico.²⁶ In response to these anticompetitive concerns, the Commission approved the merger of Bell Atlantic and GTE only after the parties agreed to the procompetitive Verizon Merger Conditions. Thus, because these same anticompetitive concerns likewise impact competitors and ultimately consumers in Puerto Rico, the Commission must apply the same panoply of merger commitments to PRTC as it adopted relative to the other Verizon service areas, in order to alleviate these anticompetitive effects.²⁷

It is worth noting that Bell Atlantic and GTE similarly attempted to exclude the Commonwealth of the Northern Marianas Islands (CNMI), another United States Territory, including it in the originally-proposed definition of “GTE Service Area” through reference to GTE’s affiliate there, the Micronesian Telecommunications Corporation, but, like Puerto Rico,

²⁵ *See id.*

²⁶ *See Bell Atlantic/GTE Order*, at paras. 175, 178 (“With respect to local exchange competition, we believe that the likelihood of increased harmful discrimination is particularly acute with respect to competitive providers of local exchange services to mass market customers (smaller businesses and residential customers). . . . [R]egulators will have greater difficulty monitoring and detecting this misconduct because of the reduction in the number of benchmarks”) (footnotes omitted).

²⁷ *See WorldNet Ex Parte Letter* at 2 (WorldNet requests that the Commission modify the *Bell Atlantic/GTE Order* “so that *all* the conditions of that order are fully applicable to PRTC. . . . Puerto Rico needs all these conditions”) (emphasis added).

excluding it from the definition of “GTE States.”²⁸ Because so many of the obligations under the Verizon Merger Conditions are framed in reference to the Bell Atlantic and/or GTE “State(s),” this omission had the effect of undermining the proposed commitments as they related to CNMI. Ultimately Bell Atlantic and GTE proffered an abridged package of conditions with respect to CNMI, in light of its “insular nature.”²⁹ Because Puerto Rico is not comparably isolated, however, application of all the Verizon Merger Conditions to PRTC is warranted.

B. The Conditions Applied to PRTC Must Include the Promotional Resale Discounts, and Others that Will Help Resellers to Compete

Amongst the procompetitive conditions that the Commission adopted in approving the merger of Bell Atlantic and GTE were promotional resale discounts on Verizon’s retail telecommunications services, where such services are resold to residential customers. The discount is 32 percent off of retail rates for an initial period and, for the remaining period of the promotion, a rate equal to 1.1 times the standard wholesale discount rate established for that service by the state commission. Once a carrier secures the promotion, it is guaranteed the promotional terms for a full three-year period.³⁰

The benefits of the promotional resale discounts are manifest, with respect to resale competitors and consumers alike. As the Commission explained, these discounts are designed specifically to encourage rapid development of local competition in residential and less dense

²⁸ Compare Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing, Attach., Proposed Conditions for Bell Atlantic/GTE Merger, with Verizon Merger Conditions.

²⁹ Verizon Merger Conditions at note 3.

³⁰ See *Bell Atlantic/GTE Order*, at paras. 310, 312; Verizon Merger Conditions at para. 37.

areas, by lowering entry barriers.³¹ The Commission further found that the size of the discount, 32 percent, should facilitate competitive entry in the residential market.³² Given their significant accounting, auditing, billing, and marketing expenses, resellers of local services need a discount of 32 percent (if not more) in order to sustain any kind of profit. Thus, the Commission should require PRTC to offer a promotional resale discount in Puerto Rico of at least that level. Furthermore, if the Commission for some reason were to find that it is not appropriate to apply the full package of Verizon Merger Conditions to PRTC, nevertheless Metro Teleconnect stresses that, for the reasons stated above, the promotional resale discount for residential customers must be one of the market-opening commitments to which the Commission holds PRTC.

Metro Teleconnect further urges the Commission that the 36 month duration of the offering window for the resale discount (in the absence of satisfaction of any line limitations to be established for Puerto Rico) should run from 30 days after the date that the Commission releases the order clarifying that the Verizon Merger Conditions apply to PRTC, rather than retroactively from when the offering window commenced for the rest of Verizon territory.³³ Commencing the offering window for the resale discount in Puerto Rico 30 days after the release of the Commission's order is consistent with the principle that "each of the conditions is

³¹ See *Bell Atlantic/GTE Order*, at paras. 307, 370.

³² *Id.* at para. 311. The standard PRTC discount for residential services is 14 percent.

³³ But see Verizon Merger Conditions at para. 38 (providing that resale discount offering window commences one month after the merger closing date).

designed to provide 36 months of benefit once its embedded obligations take effect.”³⁴

Otherwise, resellers such as Metro Teleconnect who strive to compete through resale in Puerto Rico will lose well over a year of the benefit of the conditions, thus hampering their efforts to gain a competitive foothold in Puerto Rico, contrary to the Commission’s goal of encouraging competition in residential areas.

Other Verizon Merger Conditions also are particularly essential to a procompetitive resale framework. For instance, WorldNet describes how PRTC’s resale program has yet to develop to a point where resale is viable on any significant scale in Puerto Rico, because of PRTC’s lack of established OSS procedures and performance standards.³⁵ As WorldNet depicts, “there currently is no established time frame given for transfer of service, and no complete procedure for handling delays in transfer. Though they are working towards a resolution PRTC is currently enjoying a discriminatory advantage in OSS functions by not passing through full access to resellers.”³⁶ Speed and accuracy in provisioning service to new customers are crucial in the telecommunications marketplace. Because most customers do not have knowledge of the relationship between a reseller and its underlying carrier, the customer attributes any delays and errors in provisioning service to the reseller. These considerations underscore the profound

³⁴ *Bell Atlantic/GTE Order*, at para. 368; see *Verizon Merger Conditions* at para. 64.

³⁵ See *WorldNet Ex Parte Letter* at 9.

³⁶ *Id.*

importance of applying to PRTC the conditions relating to Uniform and Enhanced OSS³⁷ and Carrier-to-Carrier Performance Plan (Including Performance Measurements).³⁸

As the Commission stated with respect to the Uniform and Enhanced OSS commitments in the Verizon Merger Conditions, “[e]ffective, nondiscriminatory access to OSS is critical for achieving the 1996 Act’s local competition objectives.”³⁹ Moreover, the Carrier-to-Carrier Performance Plan (Including Performance Measurements) provides an important self-executing enforcement mechanism under the Verizon Merger Conditions, whereby PRTC would be “encouraged” by the looming threat of automatically-triggered monetary penalties to comply with some 156 OSS sub-metrics governing pre-ordering, ordering, provisioning, maintenance and repair, and billing, 34 of which apply specifically to resale performance.⁴⁰ The performance plan and performance measurements are particularly critical in GTE legacy service areas, because legacy GTE companies, such as PRTC, are not subject to the market opening requirements of section 271 in order to provide in-region, interLATA services.

Thus, the performance measurements and noncompliance penalties in the performance plan provide both an opportunity to review PRTC’s OSS performance and enforcement of such performance, in the absence of implementation by the Puerto Rico Telecommunications

³⁷ See Verizon Merger Conditions at paras. 18-24.

³⁸ See *id.* at paras. 16-17, Attach. A, A-1b.

³⁹ *Bell Atlantic/GTE Order*, at para. 285.

⁴⁰ See Verizon Merger Conditions at Attach. A, A-1b (performance measurements applicable to legacy GTE states). See also *Bell Atlantic/GTE Order*, at para. 362 (the performance plan “provides heightened incentive for the company not to discriminate in ways that would be detected through the measures”).

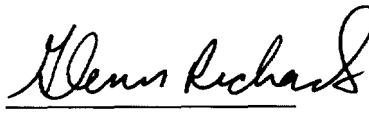
Regulatory Board of a specific performance plan with respect to PRTC.⁴¹ Finally, the performance measurements and performance plan stand as “means of ensuring that [Verizon’s] service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm’s increased incentive and ability to discriminate, and to stimulate the merged entity to adopt ‘best practices’ that clearly favor public rather than private interests.”⁴²

Conclusion

For the foregoing reasons, the Commission must apply the complete package of Verizon Merger Conditions to PRTC, including those relating to promotional resale discounts and others that will benefit competing resellers and consumers in Puerto Rico.

Respectfully submitted,

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⁴¹ See *Bell Atlantic/GTE Order*, at paras. 282, 357.

⁴² *Id.* at para. 279. The Commission found that conditions such as these, that spread best practices throughout Verizon’s service areas, help to mitigate the harm from the loss of benchmarks. See *id.* at para. 353.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April 2001, a true and correct copy of the foregoing Comments was sent by postage prepaid, first-class mail, unless otherwise indicated, to the following:

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